

BUSINESS & LABOR

EXHIBIT NO. 12
 DATE 2-6-09
 BILL NO. SB 351

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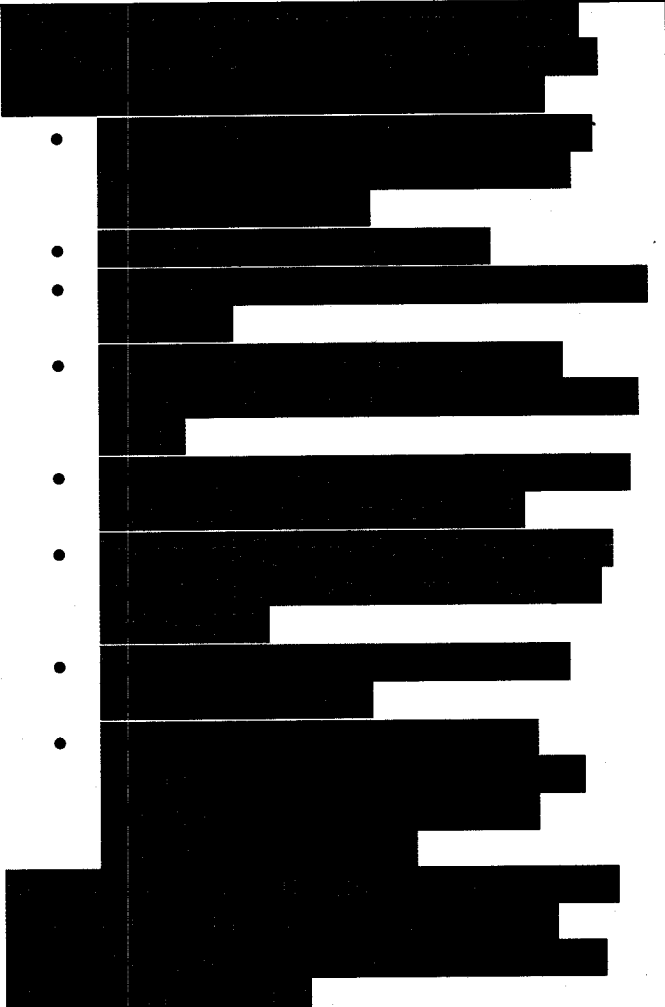
MAMB Bill LC 1932.01

1	STATE MODEL LANGUAGE FOR IMPLEMENTATION OF PUBLIC LAW 110-289, TITLE V—S.A.F.E. MORTGAGE LICENSING ACT	<p>§ 353. Part of a Specific document created by the Montana Department of Labor and Industry, Division of Business Regulation, is hereby adopted as the Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act.</p> <ul style="list-style-type: none"> • [REDACTED] • [REDACTED] • [REDACTED] • [REDACTED] • [REDACTED] • [REDACTED] • [REDACTED] • [REDACTED] <p>[REDACTED]</p>
2	<p>MSL XX.XXX.010 TITLE—This Act may be cited as the “[State] Secure and Fair Enforcement for Mortgage Licensing Act of 2009 or [State] S.A.F.E. Mortgage Licensing Act of 2009”.</p> <p>Section notes: 1. States should note that “this Act” as used throughout the MSL means either this law as a</p>	<p>(1) This part may be cited as the "Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act".</p>

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2	<p>MSL XX.XXX.010 TITLE—This Act may be cited as the “[State] Secure and Fair Enforcement for Mortgage Licensing Act of 2009 or [State] S.A.F.E. Mortgage Licensing Act of 2009”.</p> <p>Section notes: 1. States should note that “this Act” as used throughout the MSL means either this law as a</p>	<p>(1) This part may be cited as the "Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act".</p>

	<p>complete law, or a primary state mortgage law that this law has been merged into. When adopting the term "this Act," states that intend to also mean other state mortgage laws must be careful to include the appropriate reference to those other laws.</p> <p>2. Wherever shown, "[State]" is to be replaced with the actual state name (e.g. Massachusetts).</p>	
3	<p>MSL XX.XXX.020 PURPOSE OF THIS ACT [Optional language for states that do not have language sufficiently covering PL 110-289, Sec. 1508(d)(1)]— The activities of mortgage loan originators and the origination or offering of financing for residential real property have a direct, valuable and immediate impact upon [State]'s consumers, [State]'s economy, the neighborhoods and communities of [State], and the housing and real estate industry. The Legislature finds that accessibility to mortgage credit is vital to the state's citizens. The Legislature also finds that it is essential for the protection of the citizens of [State] and the stability of [State]'s economy that reasonable standards for licensing and regulation of the business practices of mortgage loan originators be imposed. The Legislature further finds that the obligations of mortgage loan originators to consumers in connection with originating or making residential mortgage loans are such as to warrant the regulation of the mortgage lending process. The purpose of this Act is to protect consumers seeking mortgage loans and to ensure that the mortgage lending industry is operating without unfair, deceptive, and fraudulent practices on the part of mortgage loan originators. Therefore the Legislature establishes within this Act:</p> <p>(1) SYSTEM OF SUPERVISION AND ENFORCEMENT—An effective system of supervision and enforcement of the mortgage lending industry, including:</p> <ul style="list-style-type: none"> (a) The authority to issue licenses to conduct business under this Act, including the authority to write rules or regulations or adopt procedures necessary to the licensing of persons covered under this Act. (b) The authority to deny, suspend, condition or revoke licenses issued under this Act. (c) The authority to examine, investigate and conduct enforcement actions as necessary to carry out the intended purposes of this Act, including the authority to subpoena witnesses 	<p>(2) The legislature recognizes that buying or financing a home is one of the largest, most complicated, and vitally important decisions facing consumers in Montana. Therefore, the legislature finds it desirable to license <u>certain persons in the residential mortgage industry that are outside of the traditional banking industry and that have a direct involvement in consumers' financial welfare, including residential mortgage brokers, mortgage lenders, and mortgage loan originators,</u> to promote honesty, education, and professionalism, to ensure the availability and diversity of residential mortgage funding, and to protect Montana consumers and the stability of Montana's economy.</p> <p>(3) <u>The legislature finds that it is necessary to implement the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 and, together with the residential mortgage industry, recognizes the importance of statewide participation in the nationwide mortgage licensing system and registry."</u></p> <p>"32-9-130. Department authority -- rulemaking. (1) The department shall adopt rules necessary to carry out the intent and purposes of this part. The rules adopted are binding on all licensees and enforceable through the power of suspension or revocation of licenses.</p>

and documents, enter orders, including cease and desist orders, order restitution and monetary penalties and order the removal and ban of individuals from office or employment.

(2) BROAD ADMINISTRATIVE AUTHORITY—

That the Commissioner shall have the broad administrative authority to administer, interpret and enforce this Act, and promulgate rules or regulations implementing this Act, in order to carry out the intentions of the Legislature.

Section notes:

1. Throughout this Act, each state will need to determine whether the language should read "Commissioner" only or when applicable some form of "Commissioner and designee."

(2) The rules must address:

(a) revocation or suspension of licenses for cause;

(b) investigation of applicants, licensees, and unlicensed persons alleged to have violated a provision of this part and handling of complaints made by any person in connection with any business transacted by a licensee;

(c) (i) ensuring that all persons are informed of their right to contest a decision by the department under the Montana Administrative Procedure Act; and

(ii) holding contested case hearings pursuant to the Montana Administrative Procedure Act and issuing cease and desist orders, orders of restitution, and orders for the recovery of administrative costs;

(d) prescribing forms for applications;

(e) developing or approving tests to be given as a prerequisite for licensure;

(f) approval of programs for continuing education; and

[REDACTED]

[REDACTED]

[REDACTED]

(g) establishing fees for testing, continuing

education programs, and license renewals.

(3) The department may seek a writ or order restraining or enjoining, temporarily or permanently, any act or practice violating any provision of this part.

(4) (a) The department may at any time examine any mortgage broker transaction and may examine the residential mortgage loan files, trust account records, and other information related to mortgage loan transactions of a licensee.

(b) When conducting a financial examination or an audit of a licensee, the department may require the licensee to pay a fee of \$300 per day for each examiner performing the financial examination or audit.

(c) If any examination fees are not paid within 30 days of the department's mailing of an invoice, the license of the mortgage broker or designated manager for the mortgage broker entity may be suspended or revoked.

(5) (a) The department may:

(i) exchange information with federal and state regulatory agencies, the attorney general, the consumer protection office of the department, and the legislative auditor;

(ii) exchange information other than confidential information with the mortgage asset research institute, inc., and other similar organizations; and

(iii) refer any matter to the appropriate law

enforcement agency for prosecution of a violation of this part.

(b) Except as provided in subsection (5)(a)(i), the department shall treat all confidential criminal justice information as confidential unless otherwise required by law.

(6) The department shall prepare, at least once each calendar year, a roster listing the name and locations for each mortgage broker and a roster of all mortgage loan originators and designated managers and the name of their employing brokers. The roster must be available to interested persons and to the general public.

(7) Pursuant to section 1508(d) of the of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, the department is authorized to:

(a) supervise and enforce the provisions of this part, including the suspension, termination, revocation, or nonrenewal of a license for violation of state or federal law;

(b) ensure that all mortgage broker and mortgage loan originator licensees under this part register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry; and

(c) regularly report violations of state or federal law and enforcement actions to the nationwide mortgage

		<u>licensing system and registry."</u>
4	<p>MSL XX.XXX.030 DEFINITIONS—For purposes of this Act, the following definitions shall apply:</p> <p>Section notes:</p> <p>1. MSL XX.XXX.030(2) is out of number sequence in order to facilitate a visual cross-reference with S.A.F.E.</p>	<p>Definitions. As used in this part, the following definitions apply:</p>
5	<p>(2) FEDERAL BANKING AGENCIES—The term "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.</p>	<p><u>"Federal banking agency" means the board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration, or the federal deposit insurance corporation.</u></p>
6	<p>(1) DEPOSITORY INSTITUTION—The term "depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act, and includes any credit union.</p>	<p><u>"Depository institution" has the meaning provided in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c), and includes any credit union.</u></p>
7	<p>(6) MORTGAGE LOAN ORIGINATOR—</p> <p>(a) IN GENERAL—The term "mortgage loan originator"—</p> <p>(i) Means an individual who for compensation or gain or in the expectation of compensation or gain—</p> <p>(A) Takes a residential mortgage loan application; or</p> <p>(B) Offers or negotiates terms of a residential mortgage loan;</p> <p>(ii) Does not include an individual engaged solely as a loan processor or underwriter except as otherwise provided in MSL XX.XXX.040(4);</p> <p>(iii) Does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with [State] law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan</p>	<p><u>(20) (a) "Mortgage loan originator" means an individual who is employed by a mortgage broker to assist borrowers by originating a residential loan, who is licensed by the state, and who is registered with and maintains a unique identifier through the nationwide mortgage licensing system and registry.</u></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p><u>(b) The term does not include an individual engaged</u></p>

originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; and (iv) Does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of title 11, United States Code.

Section notes:

1. (4)(a)(i)(A) and (B): The original S.A.F.E. language for this section presents a significant problem in the licensing of mortgage loan originators (MLOs). By using the word "and" between (A) and (B) instead of "or" S.A.F.E. effectively exempts an extremely large number of loan originators who have traditionally been licensed under state law. The MSL changes "and" to "or" to be consistent with most state laws. This change is consistent with a State's ability to establish standards in legislation that exceed the standards in S.A.F.E.

solely as a loan processor or underwriter.

"Mortgage broker" means a person or entity that provides services for a fee as an intermediary between a borrower and a mortgage lender in obtaining financing for the borrower ~~that is~~ to be secured by a residential dwelling containing one to four units, for between one and four families that is licensed with the state, and that is registered with and maintains a unique identifier through the nationwide mortgage licensing system and registry.

23) (a) "Originate" means:

(i) taking a residential mortgage loan application;

(ii) offering or negotiating terms of a residential mortgage loan for compensation or gain; or

(iii) assisting a consumer in obtaining or applying to obtain a residential mortgage loan by, including but not limited to:

(A) advising on loan terms including rates, fees, other costs;

(B) preparing loan packages; and

(C) collecting information on behalf of the consumer with regard to a residential mortgage loan.

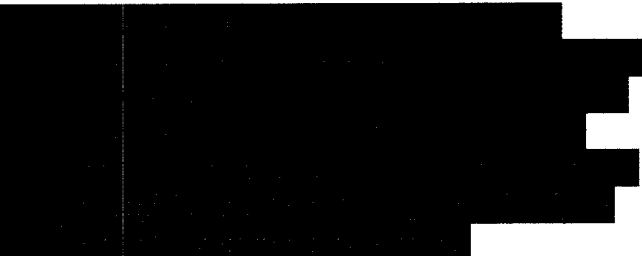
(b) The term does not include:

(i) the performance of purely administrative or clerical tasks as a loan processor or underwriter; or

		<p><u>(ii) the performance of real estate brokerage activities if done by a person licensed as a real estate broker, unless the person is compensated by a mortgage lender, a mortgage broker, or mortgage loan originator or by an agent of a mortgage lender, mortgage broker, or mortgage loan originator.</u></p> <p>"Mortgage broker" means a person or entity that provides services for a fee as an intermediary between a borrower and a <u>mortgage</u> lender in obtaining financing for the borrower that is to be secured by a residential dwelling containing one to four units, for between one and four families that is licensed with the state, and that is registered with and maintains a unique identifier through the nationwide mortgage licensing system and registry.</p>
8	<p>No language needed.</p> <p>Section notes:</p> <p>1. This definition from S.A.F.E. does not support or connect to anything within the law. It is believed to be a definition that was intended to be removed during one of the rounds of amendment.</p>	
9	<p>(b) ADMINISTRATIVE OR CLERICAL TASKS — The term “administrative or clerical tasks” means subsequent to the receipt of an application the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.</p> <p>Section notes:</p> <p>1. Deletion of this definition supports the State amendment of the definition of Loan Processor or</p>	

	Underwriter.	
10	<p>(b) REAL ESTATE BROKERAGE ACTIVITY DEFINED—For purposes of this Act the term “real estate brokerage activity” means any activity that involves offering or providing real estate brokerage services to the public, including—</p> <ul style="list-style-type: none"> (i) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property; (ii) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property; (iii) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction); (iv) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and (v) Offering to engage in any activity, or act in any capacity, described in subsections (i), (ii), (iii), or (iv) of this section. <p>Section notes: 1. Minor change from S.A.F.E. in intro sentence.</p>	<p><u>"Real estate brokerage activities" means activities that involve offering or providing real estate brokerage services to the public, including:</u></p> <ul style="list-style-type: none"> <u>(a) acting as a real estate salesperson or real estate broker for a buyer, seller, lessor, or lessee of real property;</u> <u>(b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;</u> <u>(c) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property other than in connection with providing financing with respect to the transaction; or</u> <u>(d) engaging in any activity for which a person is required to be licensed as a real estate salesperson or real estate broker under Montana law.</u>
11	<p>(5) LOAN PROCESSOR OR UNDERWRITER—</p> <p>(a) IN GENERAL—The term “loan processor or underwriter” means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing under [reference appropriate state mortgage licensing laws here].</p> <p>(b) CLERICAL OR SUPPORT DUTIES—For purposes of subsection (a), the term “clerical or support duties” may include subsequent to the receipt of an application—</p> <ul style="list-style-type: none"> (i) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and (ii) Communicating with a consumer 	<p><u>"Loan processor or underwriter" means an individual who performs administrative or clerical tasks, subsequent to the receipt of a residential mortgage loan application, at the direction of and subject to the supervision of a mortgage broker, a mortgage lender, a mortgage loan originator, or a registered mortgage loan originator.</u></p> <p><u>"Administrative or clerical tasks" mean the receipt,</u></p>

	<p>to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.</p> <p>(c) REPRESENTATIONS TO THE PUBLIC—An individual engaging solely in loan processor or underwriter activities, shall not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator.</p> <p>Section notes:</p> <p>1. This amended definition corrects a cumbersome and possibly conflicting definition from S.A.F.E. while retaining the intent to exclude supervised loan processors and underwriters (LP/UW) from the definition of mortgage loan originator, provided that the LP/UW does not represent that he/she performs as an originator. Also see independent contractor coverage under MSL XX.XXX.040(4).</p>	<p><u>collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan to the extent that the communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.</u></p> <p>A person engaging solely in loan processor or underwriter activities may not represent to the public, through advertising or other means of communication, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the person can or will perform any of the activities pertaining to originating a residential mortgage loan.</p>
12	Definition amended and moved to line 11.	
13	<p>(7) NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY—The term “Nationwide Mortgage Licensing System and Registry” means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.</p> <p>Section notes:</p> <p>1. Eliminated last part of last sentence from S.A.F.E.</p>	<p><u>"Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the registration of mortgage brokers, mortgage loan originators, and registered mortgage loan originators.</u></p>
14	<p>(8) NONTRADITIONAL MORTGAGE PRODUCT—The term “nontraditional mortgage product” means any mortgage product other than a 30-year fixed rate mortgage.</p>	<p><u>"Nontraditional mortgage product" means any mortgage product other than a 30-year, fixed-rate mortgage.</u></p>

15	<p>(9) PERSON—The term “person” means a natural person, corporation, company, limited liability company, partnership, or association.</p> <p>Section notes: 1. S.A.F.E. only contemplates “individuals.” However, the industry is structured from a company perspective as are most State systems of supervision. Specific sections of the MSL have been drafted to recognize the nature of entity control, making this new definition necessary.</p>	<p><u>“Person” means an individual, corporation, company, limited liability company, partnership, limited liability partnership, trust, or association.</u></p>
16	<p>(10) REGISTERED MORTGAGE LOAN ORIGINATOR—The term “registered mortgage loan originator” means any individual who—</p> <p>(a) Meets the definition of mortgage loan originator and is an employee of—</p> <p>(i) A depository institution;</p> <p>(ii) A subsidiary that is—</p> <p>(A) Owned and controlled by a depository institution; and</p> <p>(B) Regulated by a Federal banking agency; or</p> <p>(iii) An institution regulated by the Farm Credit Administration; and</p> <p>(b) Is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.</p> <p>Section notes: 1 Added the word “mortgage” to the term.</p>	<p><u>“Registered mortgage loan originator” means an individual who:</u></p> <p><u>(a) assists borrowers by originating residential mortgage loans and therefore meets the definition of mortgage loan originator except that the individual is not employed by a mortgage broker or mortgage lender but is employed by one of the following:</u></p> <p><u>(i) a depository institution;</u></p> <p><u>(ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or</u></p> <p><u>(iii) an institution regulated by the federal farm credit administration; and</u></p> <p><u>(b) is not required by this part to be licensed but is required to be registered with and maintain a unique identifier through the nationwide mortgage licensing system and registry.</u></p> 

17	<p>(11) RESIDENTIAL MORTGAGE LOAN—The term “residential mortgage loan” means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).</p> <p>Section notes:</p> <p>1. Pursuant to Regulation Z, §226.2(a)(19): Dwelling means a residential structure that contains 1 to 4 units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, <i>mobile home, and trailer, if it is used as a residence.</i></p>	<p><u>"Residential mortgage loan" means a loan primarily for personal, family, or household use secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in regulation Z of the Truth in Lending Act, 12 CFR 226.2, or on residential real estate located in Montana.</u></p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>"Mortgage" means a consensual interest in real property located in Montana, including improvements, securing a debt evidenced by a mortgage, trust indenture, deed of trust, or other lien on real property.</p>
18	<p>(12) RESIDENTIAL REAL ESTATE—The term “residential real estate” means any real property located in [State], upon which is constructed or intended to be constructed a dwelling.</p>	[REDACTED]
19	No language needed.	
20	No language needed.	
21	No language needed.	
22	<p>(13) UNIQUE IDENTIFIER—The term “unique identifier” means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.</p> <p>Section notes:</p> <p>1. The Nationwide Mortgage Licensing System and Registry (NMLSR) has established a unique identifier as contemplated in the S.A.F.E. definition. This definition accurately defines the term.</p>	<p><u>"Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry."</u></p>

	2. Already established within NMLSR.	
23	(3) IMMEDIATE FAMILY MEMBER—The term “immediate family member” means a spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.	<u>"Immediate family member" means a spouse, child, sibling, grandparent, grandchild, stepchild, stepbrother, or stepsister and includes parent, grandparent, child, grandchild, and sibling relationships based upon adoptive relationships.</u>
24	(4) INDIVIDUAL—The term “individual” means a natural person.	<u>"Individual" means a natural person.</u>
25	MSL XX.XXX.040 LICENSE AND REGISTRATION REQUIRED—	
26	<p>(1) IN GENERAL—An individual, unless specifically exempted from this Act under subsection (3) of this section, shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this State without first obtaining and maintaining annually a license under this Act. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.</p> <p>(2) EFFECTIVE DATE [To be used in states without mortgage loan originator licensing as of July 30, 2008]—In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the effective date for subsection (1) of this section shall be July 31, 2010, or such later date approved by the Secretary of the U.S. Department of Housing and Urban Development, pursuant to the authority granted under Public Law 110-289, Section 1508(a).</p> <p>OR</p> <p>(2) EFFECTIVE DATE [To be used in states with mortgage loan originator licensing as of July 30, 2008]—In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the effective date for subsection (1):</p> <p>(a) For all individuals other than individuals described in subsection (b) shall be July 31, 2010, or</p>	<p><u>Any person, including a mortgage lender, desiring to conduct business as a mortgage broker or and any person desiring to work as a mortgage loan originator shall apply to the department for a license and pay a license fee under the provisions of this part. Applicants shall comply with all requirements of this part, including but not limited to requisite work experience, prelicensing education, successful completion of an examination, and completion of an application approved by the department. All licenses issued under this section are nontransferable and nonassignable."</u></p> <p><u>(1) Unless exempt under 32-9-104, a A person or entity may not act as a residential mortgage broker, mortgage lender, or mortgage loan originator unless licensed under the provisions of this part.</u></p> <p><u>(2) Any person licensed as a mortgage broker or mortgage loan originator under this part or who is employed as a registered mortgage loan originator is required to register with and maintain a valid unique identifier issued by the nationwide mortgage licensing</u></p>

such later date approved by the Secretary of the U.S. Department of Housing and Urban Development, pursuant to the authority granted under Public Law 110-289, Section 1508(a).

(b) For all individuals licensed as mortgage loan originators as of the enactment of this Act shall be January 1, 2011, or such later date approved by the Secretary of the U.S. Department of Housing and Urban Development, pursuant to the authority granted under Public Law 110-289, Section 1508(a).

(3) EXEMPTION FROM THIS ACT—The following are exempt from this Act:

(a) Registered Mortgage Loan Originators, when acting for an entity described in MSL XX.XXX.030(10)(a)(i),(ii) or (iii) are exempt from this Act.

(b) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.

(c) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.

(d) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator.

Section notes:

1. (1): The reference to "any dwelling located in this State" clarifies that a separate license is required for each state in which the MLO conducts business.

2. (2): The effective date to be used in the MSL is dependent on a state's current legislation. Those states with licensing requirements for MLOs as of the date of enactment of S.A.F.E. are provided until January 1, 2011 to ensure that all currently licensed MLOs are re-licensed by 12/31/10. The purpose of this provision is to align the legislative requirements with the renewal dates of existing MLOs and the renewal requirements of NMLSR.

3. (3): It is imperative that states understand that

system and registry."

(1) The provisions of this part do not apply to:

(a) a registered mortgage loan originator and the employer of a registered mortgage loan originator when acting for or as an entity described in 32-9-103(26)(a)(i) through (26)(a)(iii), except that the requirement of registration with and maintenance of a unique identifier through the nationwide mortgage licensing system and registry applies;

[REDACTED]

(b) an individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member;

[REDACTED]

(c) an individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling owned by that individual; or

[REDACTED]

existing exemptions from licensing will need to be scrutinized in each law. Any exemptions that conflict with S.A.F.E. may put the state in a position of non-compliance since the State language would allow a "lesser" degree of coverage than S.A.F.E.

4. (3): References Registered Mortgage Loan Originator definition and makes it clear that RMLOs are exempt from this Act, but only when they are working for the exempt entity. In other words, dual employment with both a bank and a mortgage broker would require registering under the federal system and licensing under the state system.

(d) a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client unless the attorney is compensated by a mortgage lender, mortgage broker, or mortgage loan originator or any agent of the mortgage lender, mortgage broker, or mortgage loan originator.

(2) The burden of proving an exemption under this section is on the person claiming the exemption. The department shall create a form for requesting an exemption."

27 (4) INDEPENDENT CONTRACTOR LOAN PROCESSORS OR UNDERWRITERS—A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless such independent contractor loan processor or underwriter obtains and maintains a license under MSL XX.XXX.040(1). Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(5) COMMISSIONER AUTHORITY TO ESTABLISH LICENSING RULES, REGULATIONS OR INTERIM PROCEDURES AND ACCEPT EARLY APPLICATIONS—For the purposes of implementing an orderly and efficient licensing process the Commissioner may establish licensing rules or regulations and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals the Commissioner may establish expedited review and licensing procedures.

Section notes:

(2) A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless licensed under this part. Each independent contractor loan processor or underwriter licensed as mortgage loan originator shall maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.

	1. (5): The ability to issue provisional or interim licenses allows the Commissioner to process large numbers of requests without an undue interruption to the mortgage market.	
28	MSL XX.XXX.050 STATE LICENSE AND REGISTRATION APPLICATION AND ISSUANCE—	
29	<p>(1) APPLICATION FORM—Applicants for a license shall apply in a form as prescribed by the Commissioner. Each such form shall contain content as set forth by rule, regulation, instruction or procedure of the Commissioner and may be changed or updated as necessary by the Commissioner in order to carry out the purposes of this Act.</p> <p>(2) COMMISSIONER MAY ESTABLISH RELATIONSHIPS OR CONTRACTS—In order to fulfill the purposes of this Act, the Commissioner is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this Act.</p> <p>(3) WAIVE OR MODIFY REQUIREMENTS [Optional language if needed by a state.]—For the purpose of participating in the Nationwide Mortgage Licensing System & Registry, the Commissioner is authorized to waive or modify, in whole or in part, by rule, regulation or order, any or all of the requirements of this chapter and to establish new requirements as reasonably necessary to participate in the Nationwide Mortgage Licensing System & Registry.</p>	<p>Application for <u>mortgage</u> loan originator license -- employment of <u>mortgage</u> loan originator. (1) An application for a <u>mortgage</u> loan originator license must include:</p> <p>(a) the name and address of the applicant;</p> <p>(b) evidence of the applicant's experience and knowledge of the mortgage industry; and</p> <p>(c) <u>evidence that the applicant has met the preclicensing education requirements of [section 7];</u></p> <p>(d) <u>a written statement of the applicant's personal employment and personal residential history during the 7-year period preceding the date of the application for licensing;</u></p> <p>(e) <u>an independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p);</u> <u>and</u></p> <p>(f) <u>information pertaining to the applicant that is related to any administrative, civil, or criminal findings by any governmental jurisdiction.</u></p> <p>(c) a statement as to whether the applicant is under investigation, has been convicted of or pleaded guilty to any felony or criminal offense involving fraud or</p>

dishonesty, or has been subject to any adverse civil judgment for any conduct involving fraudulent or dishonest dealing.

(2) The department shall investigate each applicant. The investigation shall include a criminal records check based on the fingerprints of the applicant and a civil records check. The department shall require each applicant to file a set of the applicant's fingerprints, taken by a law enforcement agency, and any other information necessary to complete a statewide and nationwide criminal check with the criminal investigation bureau of the department of justice for state processing and with the federal bureau of investigation for federal processing. All costs associated with the criminal history check are the responsibility of the applicant. Criminal history records provided to the department under this section are confidential and the department may use the records only to determine if the applicant is eligible for licensure. If an investigation outside this state is necessary, the department may require the applicant to advance sufficient funds to pay the actual expenses of the investigation. ~~The department may deny the application if the applicant's criminal history demonstrates any felony criminal convictions or other convictions involving fraud or dishonesty or if the applicant has had any adverse civil judgments involving fraudulent or dishonest dealings.~~

(3) A mortgage loan originator may transact business only for an employing mortgage broker licensed in accordance with the provisions of this part.

Each original license issued to a mortgage loan originator must be provided to and maintained by the employing mortgage broker at the mortgage broker's main office. A copy of the mortgage loan originator's license must be displayed at the office where that mortgage loan originator principally transacts business.

(4) If the employment of a mortgage loan originator is terminated, the mortgage broker shall return the mortgage loan originator's license to the department within 5 business days after the termination. For a period of 6 months after the termination of employment, the mortgage loan originator may request the transfer of the license to another mortgage broker or mortgage lender by submitting a relocation application to the department, along with a fee established by the department by rule. The return of the license of any mortgage loan originator to the department that is not transferred to another mortgage broker terminates the right of the mortgage loan originator to engage in any residential mortgage loan origination activity until department procedures have been followed to reinstate the license. The license of any mortgage loan originator that has been returned to the department and not transferred within 6 months of termination of employment must be canceled."

Application for mortgage broker license. (1) An application for a mortgage broker license must include:

(a) the proposed principal location of the business, with a photograph of the principal location and each branch office at which business will be transacted. If the business is to be conducted out of a residence,

verification must be supplied concerning compliance with all zoning laws and regulations. The application for an individual mortgage broker intending to work as an employee of another mortgage broker must contain the name and principal address of the licensed employing mortgage broker.

(b) (i) the name and address of the sole proprietor;

(ii) the name and address of each partner; or

(iii) the name and address of any person that owns 10% or more of a mortgage broker entity that is other than a sole proprietorship or partnership;

(c) evidence of an irrevocable letter of credit or surety bond required by that the applicant has met either the surety bond or net worth requirement provided for in 32-9-123;

~~(e)~~(d) evidence that the designated manager meets the requirements for licensure as a mortgage broker;

(e) evidence that the applicant has met the prelicensing education requirements of [section 7];

(f) a written statement of the applicant's personal employment and personal residential history during the 7-year period preceding the date of the application for licensure;

(g) an independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p); and

(h) information pertaining to the applicant that is related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(2) The department shall investigate each individual applicant. The investigation shall include a criminal records check based on the fingerprints of each individual applicant and a civil records check. The department shall require each individual applicant to file a set of the applicant's fingerprints, taken by a law enforcement agency, and any other information necessary to complete a statewide and nationwide criminal check with the criminal investigation bureau of the department of justice for state processing and with the federal bureau of investigation for federal processing. All costs associated with the criminal history check are the responsibility of the applicant. Criminal history records provided to the department under this section are confidential, and the department may use the records only to determine if the applicant is eligible for licensure. If an investigation outside this state is necessary, the department may require the applicant to advance sufficient funds to pay the actual expenses of the investigation. ~~The department may deny the application if the applicant's criminal history demonstrates any felony criminal convictions or other convictions involving fraud or dishonesty or if the applicant has had any adverse civil judgments involving fraudulent or dishonest dealings."~~



30	<p>(4) BACKGROUND CHECKS—In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including—</p> <ul style="list-style-type: none"> (a) Fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a state, national and international criminal history background check; and (b) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the Commissioner to obtain— <ul style="list-style-type: none"> (i) An independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and (ii) Information related to any administrative, civil or criminal findings by any governmental jurisdiction. <p>(5) AGENT FOR PURPOSES OF REQUESTING AND DISTRIBUTING CRIMINAL INFORMATION— For the purposes of this section and in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of subsection (4)(a) and (b)(ii) of this section the Commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency.</p> <p>(6) AGENT FOR PURPOSES OF REQUESTING AND DISTRIBUTING NON-CRIMINAL INFORMATION— For the purposes of this section and in order to reduce the points of contact which the Commissioner may have to maintain for purposes of</p>	<p>NEW SECTION. Section 14. Compliance of current mortgage brokers and mortgage loan originator licensees with background check and minimum standards. (1) Upon application to the department by a current licensee for renewal of a mortgage broker or mortgage loan originator license, the applicant shall provide evidence of registration with and maintenance of a unique identifier issued by the nationwide mortgage licensing system and registry and shall simultaneously furnish to the nationwide mortgage and licensing system and registry the following:</p> <ul style="list-style-type: none"> (a) an authorization to the nationwide mortgage licensing system and registry to request that the federal bureau of investigation access previously submitted fingerprints for purposes of a supplemental criminal history background check; and <div style="background-color: black; height: 20px; width: 100%; margin: 10px 0;"></div> <div style="background-color: black; height: 20px; width: 100%; margin: 10px 0;"></div> <ul style="list-style-type: none"> (b) a written statement of personal history and experience, including authorization for the nationwide mortgage licensing system and registry to obtain: <ul style="list-style-type: none"> (i) a current independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p); and
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subsection (4)(b)(i) and (ii) of this section the Commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the Commissioner.

Section notes:

1. The NMLSR will process fingerprints through the FBI only. States desiring a criminal background check beyond the FBI (e.g. state police) are recommended to address this issue specifically in their laws.

(ii) information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(2) Upon application to the department by a current licensee for renewal of a mortgage broker, mortgage lender, or mortgage loan originator license, the department shall commence a supplemental investigation of the applicant and may not renew any license if any of the following facts are found:

(a) (i) the applicant has ever had a mortgage broker, mortgage lender, or mortgage loan originator license or their equivalent revoked in any governmental jurisdiction;

(ii) for the purposes of subsection (2)(a)(i), "revoked" means that the license of a mortgage broker, mortgage lender, or mortgage loan originator has been expressly revoked as the result of a publicly adjudicated disciplinary or enforcement action by the department or other governmental jurisdiction. The term does not include other forms of license treatment such as surrender of a license, vacation of a license, or lapse of a license that are not to be considered a license revocation if that license treatment is to be the determining factor relied upon by the department in denying, refusing to renew, or revoking the existing license of a mortgage broker, mortgage lender, or mortgage loan originator. The nature of the license treatment and not the label given it by any governmental jurisdiction is controlling.

(b) the applicant has been convicted of or plead guilty or nolo contendere to a felony in a domestic,

foreign, or military court during the 7-year period preceding the date of the application for renewal or at any time preceding the date of application if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering;

(c) the applicant has failed to demonstrate financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the mortgage broker, mortgage lender, or mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this section.

(3) The department shall determine that the applicant has demonstrated the qualities of financial responsibility, character, and general fitness referred to in subsection (2)(c) if all other requirements for licensure under this section have been satisfied and the department's investigation does not reveal a specific problem on the applicant's part with respect to subsection



31 **MSL XX.XXX.060 ISSUANCE OF LICENSE—**
The Commissioner shall not issue a mortgage loan originator license unless the Commissioner makes at a minimum the following findings:

(1) **NO LICENSE REVOCATION—**The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of such revocation shall

Section 16. Denial of mortgage broker, mortgage lender, or mortgage loan originator license application or license renewal. (1) The department may not issue or renew any mortgage broker, mortgage lender, or mortgage loan originator license if any of the following facts are found during the

not be deemed a revocation.

(2) NO FELONY CONVICTION—The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court—

- (a) During the 7-year period preceding the date of the application for licensing and registration; or
- (b) At any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering;
- (c) Provided that any pardon of a conviction shall not be a conviction for purposes of this subsection.

(3) CHARACTER AND FITNESS—The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this Act.

(a) For purposes of this subsection a person has shown that he or she is not financially responsible when he or she has shown a disregard in the management of his or her own financial condition. A determination that an individual has not shown financial responsibility may include, but not be limited to:

- (i) Current outstanding judgments, except judgments solely as a result of medical expenses;
- (ii) Current outstanding tax liens or other government liens and filings;
- (iii) Foreclosures within the past three years;
- (iv) A pattern of seriously delinquent accounts within the past three years.

(4) PRE-LICENSING EDUCATION—The applicant has completed the pre-licensing education requirement described in subsection MSL XX.XXX.070.

(5) WRITTEN TEST—The applicant has passed a written test that meets the test requirement described

application procedure:

(a) (i) the applicant has ever had a mortgage broker, mortgage lender, or mortgage loan originator license or their equivalent revoked in any governmental jurisdiction;

(ii) for the purposes of subsection (1)(a)(i), "revoked" means that the license of a mortgage broker, mortgage lender, or mortgage loan originator has been expressly revoked as the result of a publicly adjudicated disciplinary or enforcement action by the department or other governmental jurisdiction. The term does not include other forms of license treatment such as surrender of a license, vacation of a license, or lapse of a license that are not to be considered a license revocation if that license treatment is to be the determining factor relied upon by the department in denying, refusing to renew, or revoking the existing license of a mortgage broker, mortgage lender, or mortgage loan originator. The nature of the license treatment and not the label given it by any governmental jurisdiction is controlling.

[REDACTED]

[REDACTED]

(b) the applicant has been convicted of or plead guilty or nolo contendere to a felony in a domestic, foreign, or military court during the 7-year period preceding the date of the application for licensing or renewal or at any time preceding the date of

in subsection MSL XX.XXX.080.


(6) **NET WORTH, SURETY BOND OR STATE FUND REQUIREMENT**—The applicant has met the [States must choose one: net worth, surety bond requirement, or paid into a State fund] as required pursuant to MSL XX.XXX.140.

application if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering;

(c) the applicant has failed to demonstrate financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the mortgage broker, mortgage lender, or mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this section.

(2) The department shall determine that the applicant has demonstrated the qualities of financial responsibility, character, and general fitness referred to in subsection (1)(c) if all other requirements for licensure under this section have been satisfied and the department's investigation does not reveal a specific problem on the applicant's part with respect to subsection (1)(c).



(3) For purposes of this section and to reduce the points of contact for investigation by the department, the department may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information.



32 **MSL XX.XXX.070 PRE-LICENSING AND RE-LICENSING EDUCATION OF LOAN ORIGINATORS—**

(1) **MINIMUM EDUCATIONAL REQUIREMENTS**—In order to meet the pre-

Prelicensing education requirements for mortgage brokers and mortgage loan originators. An individual seeking a mortgage broker's license or a mortgage loan originator's license shall complete at

	<p>licensing education requirement referred to in subsection MSL XX.XXX.060(4) a person shall complete at least 20 hours of education approved in accordance with subsection (2) of this section, which shall include at least—</p> <ul style="list-style-type: none"> (a) 3 hours of Federal law and regulations; (b) 3 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and (c) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace. 	<p>least 20 hours of approved education courses, which must include:</p> <ul style="list-style-type: none"> (1) at least 3 hours of training on federal law and regulations; (2) 3 hours of training in ethics, including instruction on fraud, consumer protection, and fair lending issues; and (3) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.
33	<p>(2) APPROVED EDUCATIONAL COURSES—For purposes of subsection (1) of this section, pre-licensing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a pre-licensing education course shall include review and approval of the course provider.</p> <p>(3) APPROVAL OF EMPLOYER AND AFFILIATE EDUCATIONAL COURSES—Nothing in this section shall preclude any pre-licensing education course, as approved by the Nationwide Mortgage Licensing System and Registry that is provided by the employer of the applicant or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such employer or entity.</p> <p>(4) VENUE OF EDUCATION—Pre-licensing education may be offered either in a classroom, online or by any other means approved by the Nationwide Mortgage Licensing System and Registry.</p> <p>(5) RECIPROCITY OF EDUCATION—The pre-licensing education requirements approved by the Nationwide Mortgage Licensing System and Registry in subsections (1)(a), (b) and (c) of this section for any state shall be accepted as credit towards completion of pre-licensing education requirements in [State].</p>	<p>(2) <u>"Approved education course" means any course approved by the nationwide mortgage licensing system and registry and recognized by the department.</u></p> <p> </p> <p>Section 15. Waiver of examination and education requirements for current mortgage broker and mortgage loan originator licensees. (1) Upon application by a current mortgage broker or mortgage loan originator licensee for license renewal, the department shall grant a waiver of the prelicensing education requirements established in [section 7] and the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, if:</p> <ul style="list-style-type: none"> (a) the applicant is currently acting as a state-licensed mortgage broker or mortgage loan originator

(6) RE-LICENSING EDUCATION

REQUIREMENTS—A person previously licensed under this Act subsequent to the Effective Date of this Act applying to be licensed again must prove that they have completed all of the continuing education requirements for the year in which the license was last held.

Section notes:

1. (5): This language allows for reciprocity of like courses and like credit without granting full reciprocity across state borders.

in this state;

(b) the applicant's license is valid and current;

(c) the applicant has never had a mortgage broker or mortgage loan originator license revoked or suspended in any jurisdiction;

(d) the applicant has not been convicted of a felony that would authorize the department to deny a license;

(e) the applicant otherwise meets or exceeds all applicable requirements of this part for licensure including:

(i) the applicant has demonstrated financial responsibility, character, and general fitness to engage in the business of originating mortgage loans; and

(ii) the applicant has provided satisfactory evidence of a surety bond or net worth requirement as provided in 32-9-123; and

(f) the applicant can demonstrate at least one of the following:

(i) completion of a minimum of 20 hours of approved education courses within the 5 years preceding the date of the application;

(ii) a passing score on a written examination administered by an approved test provider within the 5 years preceding the date of the application; or

(iii) employment as a licensed mortgage broker, mortgage lender, or mortgage loan originator under

		<p>this part for a period of 2 years as of the date of application.</p> <p>(2) This section may not be construed as granting any mortgage broker or mortgage loan originator a waiver of the continuing education requirements prescribed under 32-9-118.</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
34	<p>No language needed.</p> <p>Section notes:</p> <p>1. These are NMLSR requirements not directly applicable under state statute.</p>	
35	<p>MSL XX.XXX.080 TESTING OF LOAN ORIGINATORS—</p> <p>(1) IN GENERAL—In order to meet the written test requirement referred to in MSL XX.XXX.060(5), an individual shall pass, in accordance with the standards established under this subsection, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards.</p> <p>(2) QUALIFIED TEST—A written test shall not be treated as a qualified written test for purposes of subsection (1) of this section unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including—</p> <ul style="list-style-type: none"> (a) Ethics; (b) Federal law and regulation pertaining to mortgage origination; (c) State law and regulation pertaining to mortgage origination; (d) Federal and State law and regulation, 	<p><u>Examination requirements for mortgage brokers and mortgage loan originators.</u> (1) <u>Individuals An individual seeking a mortgage broker's license and individuals seeking or a mortgage loan originator's license shall submit to an examination provided for by the department. The department may use a third party to perform examination and grading services.</u></p> <p>(2) <u>In order to meet the examination requirement referred to in subsection (1), an individual shall pass, in accordance with the standards established under this section, a qualified written exam developed by the nationwide mortgage licensing system and registry and adopted by the department that is administered by an approved test provider.</u></p> <p>(3) <u>A written examination may not be treated as a</u></p>

including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(3) TESTING LOCATION—Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System and Registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(4) MINIMUM COMPETENCE—

(a) PASSING SCORE—An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than 75 percent correct answers to questions.

(b) INITIAL RETESTS—An individual may retake a test 3 consecutive times with each consecutive taking occurring at least 30 days after the preceding test.

(c) SUBSEQUENT RETESTS—After failing 3 consecutive tests, an individual shall wait at least 6 months before taking the test again.

(d) RETEST AFTER LAPSE OF LICENSE—A licensed mortgage loan originator who fails to maintain a valid license for a period of 5 years or longer shall retake the test, not taking into account any time during which such individual is a registered mortgage loan originator.

Section notes:

1. (4)(d): Takes into consideration the time an originator spends as a registered mortgage loan originator for a depository institution (RMLO). If a person leaves the state system and goes to work for a bank for 2 years, and after a total of 6 years returns to the state system, the person is still within the 5 year period of time and will not be required to retake the test.

qualified written examination for purposes of this section unless the exam adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including but not limited to:

(a) ethics;

(b) federal and state laws and regulations pertaining to mortgage origination; and

(c) federal and state laws and regulations pertaining to fraud, consumer protection, the nontraditional mortgage product marketplace, and fair lending issues.

(4) An individual may not be considered to have passed a qualified examination unless the individual achieves an exam score of at least 75%.

(5) The department shall by rule establish procedures for retesting after examination failures or after lapse of license in compliance with provisions of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289."

(3) "Approved test provider" means any test provider approved by the department.

[REDACTED]

[REDACTED]

Section 15. Waiver of examination and education requirements for current mortgage broker and

mortgage loan originator licensees. (1) Upon application by a current mortgage broker or mortgage loan originator licensee for license renewal, the department shall grant a waiver of the prelicensing education requirements established in [section 7] and the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, if:

(a) the applicant is currently acting as a state-licensed mortgage broker or mortgage loan originator in this state;

(b) the applicant's license is valid and current;

(c) the applicant has never had a mortgage broker or mortgage loan originator license revoked or suspended in any jurisdiction;


(d) the applicant has not been convicted of a felony that would authorize the department to deny a license;

(e) the applicant otherwise meets or exceeds all applicable requirements of this part for licensure including:

(i) the applicant has demonstrated financial responsibility, character, and general fitness to engage in the business of originating mortgage loans; and

(ii) the applicant has provided satisfactory evidence of a surety bond or net worth requirement as provided in 32-9-123; and

(f) the applicant can demonstrate at least one of the

		<p>following:</p> <p>(i) completion of a minimum of 20 hours of approved education courses within the 5 years preceding the date of the application;</p> <p>(ii) a passing score on a written examination administered by an approved test provider within the 5 years preceding the date of the application; or</p> <p>(iii) employment as a licensed mortgage broker, mortgage lender, or mortgage loan originator under this part for a period of 2 years as of the date of application.</p> <p>(2) This section may not be construed as granting any mortgage broker or mortgage loan originator a waiver of the continuing education requirements prescribed under 32-9-118.</p>
36	<p>MSL XX.XXX.180 MORTGAGE CALL REPORTS—Each [mortgage licensee] shall submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require.</p> <p>Section notes:</p> <p>1. This section is out of number sequence in relation to MSL.</p> <p>2. Mortgage licensee is placed in [brackets] as a placeholder for the appropriate state reference to the mortgage “company” or mortgage loan originator as is applicable.</p>	<p>Mortgage call reports. Each mortgage broker entity shall submit to the nationwide mortgage licensing system and registry reports of condition, which must be in the form and must contain information that the nationwide mortgage licensing system and registry may require.</p> 
37	MSL XX.XXX.090 STANDARDS FOR LICENSE RENEWAL —	

(1) IN GENERAL—The minimum standards for license renewal for mortgage loan originators shall include the following:

- (a) The mortgage loan originator continues to meet the minimum standards for license issuance under MSL XX.XXX.060(1)-(6).
- (b) The mortgage loan originator has satisfied the annual continuing education requirements described in MSL XX.XXX.100.
- (c) The mortgage loan originator has paid all required fees for renewal of the license.

(2) FAILURE TO SATISFY MINIMUM STANDARDS OF LICENSE RENEWAL—The license of a mortgage loan originator failing to satisfy the minimum standards for license renewal shall expire. The Commissioner may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the Nationwide Mortgage Licensing System and Registry.

Fees -- license renewal -- disposition of fees. (1) (a)

Except as provided in subsection (1)(b), an individual mortgage broker or an entity seeking licensure as a mortgage broker shall pay an initial nonrefundable license application fee of \$500. A mortgage loan originator shall pay an initial nonrefundable license application fee of \$400. An individual mortgage lender or an entity seeking licensure as a mortgage lender shall pay an initial nonrefundable license application fee of \$750 and an additional application fee of \$250 for any branch location. An applicant shall pay one-half of these initial nonrefundable license application fees for any license period of less than 6 months.

(b) (i) An individual who is seeking licensure as a mortgage broker and who is the sole owner of an entity that is seeking licensure as a mortgage broker shall pay a single initial nonrefundable license application fee of \$500.

(ii) The department shall assess only one licensing fee of \$750 for an applicant seeking dual licensure as a mortgage broker and a mortgage lender.

(2) The license of a mortgage broker, mortgage lender, or mortgage loan originator is valid for a 1-year period and expires on ~~June 30~~ December 31. Every ~~A~~ licensee shall, on or before ~~May 31~~ November 30 of the each year, submit a renewal application and pay to the department a renewal fee in an amount set by the department by rule. The department shall establish by rule the requirements for renewal applications. The department shall establish a single renewal fee for individuals and entities described in subsection

		<p><u>subsections (1)(b)(i) and (1)(b)(ii) that are licensed as mortgage brokers.</u> An individual described in subsection (1)(b)(i) may act as a designated manager under 32-9-122 and is not subject to any additional license fees for acting in the capacity of a designated manager. The fees set by the department must be commensurate with the costs of the program. Failure to submit required information or fees within the time prescribed automatically revokes the license.</p> <p>(3) An application for renewal must be accompanied by evidence that the continuing education requirements provided for in 32-9-118 have been met and that there has not been a material change in the status of the licensee in the preceding 12 months.</p> <p>(4) All fees collected under this section must be deposited in the department's state special revenue fund to be used by the department in administering the provisions of this part.</p> <p><u>(5) An applicant for a mortgage broker or mortgage loan originator license renewal shall provide evidence of registration with and maintenance of a unique identifier issued by the nationwide mortgage licensing system and registry."</u></p>
39	<p>MSL XX.XXX.100 CONTINUING EDUCATION FOR MORTGAGE LOAN ORIGINATORS—</p> <p>(1) IN GENERAL—In order to meet the annual continuing education requirements referred to in section XX.XXX.090(1)(b), a licensed mortgage loan</p>	<p><u>Continuing education requirements for mortgage loan originators and mortgage brokers.</u> All mortgage loan originators and all individual mortgage brokers shall complete and submit to the department</p>

originator shall complete at least 8 hours of education approved in accordance with subsection (2) of this section, which shall include at least—

- (a) 3 hours of Federal law and regulations;
- (b) 2 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and
- (c) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(2) APPROVED EDUCATIONAL COURSES—For purposes of subsection (1) of this section, continuing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.

(3) APPROVAL OF EMPLOYER AND AFFILIATE EDUCATIONAL COURSES—Nothing in this section shall preclude any education course, as approved by the Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the mortgage loan originator or an entity which is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity.

(4) VENUE OF EDUCATION—Continuing education may be offered either in a classroom, online or by any other means approved by the Nationwide Mortgage Licensing System and Registry.

(5) CALCULATION OF CONTINUING EDUCATION CREDITS—A licensed mortgage loan originator—

- (a) Except for MSL XX.XXX.090(2) and subsection (9) of this section may only receive credit for a continuing education course in the year in which the course is taken; and
- (b) May not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(6) INSTRUCTOR CREDIT—A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own

evidence of at least 12 hours of continuing education every year at the time they submit their license renewal applications. The 12 hours of continuing education must be obtained in ~~courses or programs of study approved by the department and in areas established by the department by rule~~ an approved education course."

annual continuing education requirement at the rate of 2 hours credit for every 1 hour taught.

(7) RECIPROCITY OF EDUCATION—A person having successfully completed the education requirements approved by the Nationwide Mortgage Licensing System and Registry in subsections (1)(a), (b) and (c) of this section for any state shall be accepted as credit towards completion of continuing education requirements in [State].

(8) LAPSE IN LICENSE—A licensed mortgage loan originator who subsequently becomes unlicensed must complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

(9) MAKE UP OF CONTINUING EDUCATION—A person meeting the requirements of MSL XX.XXX.090(1)(a) and (c) may make up any deficiency in continuing education as established by rule or regulation of the Commissioner.

Section notes:

1. No Limitation and Standards language needed. This is NMLSR requirement not directly applicable to state law.
2. (7): This language allows for reciprocity of like courses and like credit without granting full reciprocity across state borders.
3. (8): This section is intended to correct a loophole in which MLOs may move from licensed to registered and back to licensed in order to avoid the continuing education requirement. For example, the MLO transfers from licensed to registered in November 2008, but has not completed continuing education for 2008. The MLO subsequently reapplies for a license in March 2009, but there is no requirement to complete the prior year's continuing education.
4. (9): This section is intended to allow the make up of continuing education provided there are no other outstanding issues. The Commissioner may establish rules governing when and how the make up will be allowed, including fee penalties for failure to complete in a timely manner.

40 No language needed.

41 **MSL [For applicable states only.] XX.XXX.200 PRIVATELY INSURED CREDIT UNIONS—**
Non-federally insured credit unions which employ

	<p>loan originators, as defined in PL 110-289, Title V, the S.A.F.E. Act, shall register such employees with the Nationwide Mortgage Licensing System and Registry by furnishing the information concerning the employees' identity set forth in Section 1507(a)(2) of PL 110-289, Title V.</p> <p>Section notes:</p> <p>1. This language is proposed by NASCUS.</p>	
42		
43	No language needed.	
44	<p>Section notes:</p> <p>1. No specific language is necessary for this section; however the Purpose language contained in line 3 supports this section.</p>	
45	<p>MSL XX.XXX.110 AUTHORITY TO REQUIRE LICENSE—In addition to any other duties imposed upon the Commissioner by law, the Commissioner shall require mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement the Commissioner is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the Commissioner may establish [by rule/regulation or order] requirements as necessary, including but not limited to:</p> <p>(1) BACKGROUND CHECKS—Background checks for:</p> <ul style="list-style-type: none"> (a) Criminal history through fingerprint or other databases; (b) Civil or administrative records; (c) Credit history; or (d) Any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry. <p>(2) FEES—The payment of fees to apply for or renew licenses through the Nationwide Mortgage Licensing System and Registry;</p> <p>(3) SETTING DATES—The setting or resetting as</p>	

	<p>necessary of renewal or reporting dates; and</p> <p>(4) OTHER—Requirements for amending or surrendering a license or any other such activities as the Commissioner deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.</p>	
46	<p>MSL XX.XXX.190 REPORT TO NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY—[Notwithstanding or Subject to state privacy law] the Commissioner is required to report regularly violations of this act, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry subject to the provisions contained in [MSL XX.XXX.150].</p> <p>Section notes:</p> <ol style="list-style-type: none"> 1. This section is out of order in relation to MSL. 2. The phrase in brackets should be modified depending on the state's privacy law. The intent of this section is that regardless of state law, the information must be reported in order to be in compliance with S.A.F.E. 	<p><u>(7) Pursuant to section 1508(d) of the of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, the department is authorized to:</u></p> <p><u>(a) supervise and enforce the provisions of this part, including the suspension, termination, revocation, or nonrenewal of a license for violation of state or federal law;</u></p> <p><u>(b) ensure that all mortgage broker and mortgage loan originator licensees under this part register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry; and</u></p> <p><u>(c) regularly report violations of state or federal law and enforcement actions to the nationwide mortgage licensing system and registry."</u></p>
47	<p>MSL XX.XXX.120 NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY INFORMATION CHALLENGE PROCESS—The Commissioner shall establish a process whereby mortgage loan originators may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the Commissioner.</p>	<p>Section 24. Nationwide mortgage licensing system and registry information challenge process. The department shall establish a process under which mortgage brokers and mortgage loan originators may challenge information entered into the nationwide mortgage licensing system and registry by the department.</p>

48 **MSL XX.XXX.130 [For states lacking sufficient enforcement authority for compliance with S.A.F.E. Sec. 1508(d)(1) & (5).] ENFORCEMENT AUTHORITIES, VIOLATIONS AND PENALTIES—**

(1) In order to ensure the effective supervision and enforcement of this Act the Commissioner may, pursuant to the [Administrative Procedures Act]:

- (a) Deny, suspend, revoke, condition or decline to renew a license for a violation of this Act, rules or regulations issued under this Act or order or directive entered under this Act.
- (b) Deny, suspend, revoke, condition or decline to renew a license if an applicant or licensee fails at any time to meet the requirements of MSL XX.XXX.060 or MSL XX.XXX.090, or withholds information or makes a material misstatement in an application for a license or renewal of a license.
- (c) Order restitution against persons subject to this Act for violations of this Act.
- (d) Impose fines on persons subject to this Act pursuant to subsections (2), (3) and (4) of this section.
- (e) Issue orders or directives under this Act as follows:
 - (i) Order or direct persons subject to this Act to cease and desist from conducting business, including immediate temporary orders to cease and desist.
 - (ii) Order or direct persons subject to this Act to cease any harmful activities or violations of this Act, including immediate temporary orders to cease and desist.
 - (iii) Enter immediate temporary orders to cease business under a license or interim license issued pursuant to the authority granted under MSL XX.XXX.040(5) if the Commissioner determines that such license was erroneously granted or the licensee is currently in violation of this Act;
 - (iv) Order or direct such other affirmative action as the

Revocation, suspension, and reinstatement of

licenses. (1) The department, upon giving the a mortgage broker, mortgage lender, or mortgage loan originator licensee 10 days' written notice, which includes a statement of the grounds for the proposed suspension or revocation, and informing the licensee that the licensee has the right to be heard at an administrative hearing if requested by the licensee, may suspend or revoke a license if it finds that the licensee has violated any provision of this part.

(2) All notices, hearing schedules, and orders must be mailed to the licensee by certified mail to the address for which the license was issued.

(3) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.

(4) The department may reinstate any suspended or revoked license if there is not a fact or condition existing at the time of reinstatement that would have justified the department's refusal to originally issue the license. ~~If a license has been revoked for cause, an application may not be made for the issuance of a new license or the reinstatement of a revoked license for a period of 6 months from the date of revocation."~~

(1) If the department finds, after providing a 10-day written notice that includes a statement of alleged violations and a hearing or an opportunity for hearing, as provided in the Montana Administrative Procedure Act, that any person, licensee, or officer, agent,

Commissioner deems necessary.

(2) The Commissioner may impose a civil penalty on a mortgage loan originator or person subject to this Act, if the Commissioner finds, on the record after notice and opportunity for hearing, that such mortgage loan originator or person subject to this Act has violated or failed to comply with any requirement of this Act or any regulation prescribed by the Commissioner under this Act or order issued under authority of this Act.

(3) The maximum amount of penalty for each act or omission described in subsection (2) of this section shall be \$25,000.

(4) Each violation or failure to comply with any directive or order of the Commissioner is a separate and distinct violation or failure.

Section notes:

1. "Directive" as used in this section is intended to refer to a formal proceeding by the Commissioner.
2. (1)(d)(iii) provides the Commissioner with the authority to correct interim licensing decisions based on inaccurate information.

employee, or representative of the person or licensee, whether licensed or unlicensed, has violated any of the provisions of this part, has failed to comply with the rules, instructions, or orders promulgated by the department, has failed or refused to make required reports to the department, has furnished false information to the department, or has operated without a required license, the department may impose a civil penalty not to exceed \$5,000 for the first violation and not to exceed \$10,000 for each subsequent violation.

(2) The department may issue an order requiring restitution to borrowers and reimbursement of the department's cost in bringing the administrative action. In addition, the department may issue an order revoking or suspending the right of the person or licensee, directly or through an officer, agent, employee, or representative, to do business in this state as a licensee or to engage in the mortgage broker business.

(3) All notices, hearing schedules, and orders must be mailed to the person or licensee by certified mail to the address for which the license was issued or in the case of an unlicensed business to the last-known address of record.

(4) The fines must be deposited in the state general fund.

(5) In addition to the penalties in subsection (1), a person practicing as a mortgage broker or mortgage loan originator without being licensed as required under subsection (1) is guilty of a misdemeanor and

may be punished by a fine of not less than \$250 or more than \$1,000, by imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of subsection (1) constitutes a separate offense."

32-9-132. Injunctions -- receivers. (1)

Whenever the department has reasonable cause to believe that any person is violating or is threatening to violate this part or a rule adopted under this part, the department may, in addition to all actions provided for in this part and without prejudice to those actions, seek an order requiring the person to desist or to refrain from the violation.

(2) An action may be brought by the department in the district court of the first judicial district, Lewis and Clark County, to enjoin the person from engaging in or continuing the violation or from doing any act or acts in furtherance of the violation. In any action, a preliminary or final injunction may be ordered as considered proper.

(3) In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which the action is brought may impound and appoint a receiver for the property and business of the defendant, including books, papers, documents, or records pertaining to the property or business, or as much of the property or business as the court considers reasonably necessary to prevent violations of this part. The receiver, when appointed and qualified, has the powers and duties as to custody, collection, administration, winding up, and liquidation of the property and business that are conferred upon the receiver by the court.

read:

"32-9-133. Penalties -- restitution. (1) If the department finds, after providing a 10-day written notice that includes a statement of alleged violations and a hearing or an opportunity for hearing, as provided in the Montana Administrative Procedure Act, that any person, licensee, or officer, agent, employee, or representative of the person or licensee, whether licensed or unlicensed, has violated any of the provisions of this part, has failed to comply with the rules, instructions, or orders promulgated by the department, has failed or refused to make required reports to the department, has furnished false information to the department, or has operated without a required license, the department may impose a civil penalty not to exceed \$5,000 for the first violation and not to exceed \$10,000 for each subsequent violation.

(2) The department may issue an order requiring restitution to borrowers and reimbursement of the department's cost in bringing the administrative action. In addition, the department may issue an order revoking or suspending the right of the person or licensee, directly or through an officer, agent, employee, or representative, to do business in this state as a licensee or to engage in the mortgage broker business.

(3) All notices, hearing schedules, and orders must be mailed to the person or licensee by certified mail to the address for which the license was issued or in the case of an unlicensed business to the last-known

address of record.

(4) The fines must be deposited in the state general fund.

(5) In addition to the penalties in subsection (1), a person practicing as a mortgage broker or mortgage loan originator without being licensed as required under subsection (1) is guilty of a misdemeanor and may be punished by a fine of not less than \$250 or more than \$1,000, by imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of subsection (1) constitutes a separate offense."

32-9-142. Cease and desist orders. (1) If it appears to the department that a person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this part or any rule adopted or order issued by the department pursuant to this part, the department may issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing. The order may apply only to the alleged act or practice constituting a violation of this chapter. The department may issue a temporary order pending the hearing that:

(a) remains in effect until 10 days after the hearings examiner issues proposed findings of fact and conclusions of law and a proposed order; or

(b) becomes final if the person to whom notice is addressed does not request a hearing within 10 days after receipt of the notice.

(2) A violation of an order issued pursuant to this section is subject to the penalty provisions of this part.

49 MSL XX.XXX.140 [Pursuant to PL 110-289, Title V, Section 1508(d)(6), each state will choose one of the following options.]

SURETY BOND REQUIRED—

(1) COVERAGE, FORM AND REGULATIONS—Each mortgage loan originator shall be covered by a surety bond in accordance with this section. In the event that the mortgage loan originator is an employee or exclusive agent of a person subject to this Act, the surety bond of such person subject to this Act can be used in lieu of the mortgage loan originator's surety bond requirement.

(a) The surety bond shall provide coverage for each mortgage loan originator in an amount as prescribed in subsection (2) of this section.

(b) The surety bond shall be in a form as prescribed by the Commissioner.

(c) The Commissioner may promulgate rules or regulations with respect to the requirements for such surety bonds as are necessary to accomplish the purposes of this Act.

(2) PENAL SUM OF SURETY BOND—The penal sum of the surety bond shall be maintained in an amount that reflects the dollar amount of loans originated as determined by the Commissioner.

(3) ACTION ON BOND—When an action is commenced on a licensee's bond the Commissioner may require the filing of a new bond.

(4) NEW BOND—Immediately upon recovery upon any action on the bond the licensee shall file a new bond.

OR

MINIMUM NET WORTH REQUIRED—

(1) MINIMUM NET WORTH—A minimum net

Surety bond, irrevocable letter of credit, or net worth requirement -- notice of legal action. (1) (a)

Each Except as provided in subsection (1)(b), each mortgage broker and mortgage lender, other than an individual mortgage broker working as an employee of a mortgage broker or mortgage lender, shall maintain at all times an irrevocable letter of credit or a surety bond, naming the department as a beneficiary, in the amount of \$25,000 for each principal location and branch office identified in the application for licensure.

(b) A mortgage lender may provide an irrevocable letter of credit naming the department as beneficiary in lieu of a surety bond as provided in subsection (3).

(c) The department shall use the proceeds of the irrevocable letters of credit or surety bonds to reimburse borrowers or bona fide third parties who successfully demonstrate a financial loss because of an act of a licensee mortgage broker or mortgage lender that violates the provisions of this part.

(2) (a) A mortgage broker or mortgage lender is required to maintain only one surety bond or letter of credit for the principal location and all other locations identified in the mortgage broker's or mortgage lender's

worth shall be continuously maintained for mortgage loan originators in accordance with this section. In the event that the mortgage loan originator is an employee or exclusive agent of a person subject to this Act, the net worth of such person subject to this Act can be used in lieu of the mortgage loan originator's minimum net worth requirement.

(a) Minimum net worth shall be maintained in an amount that reflects the dollar amount of loans originated as determined by the Commissioner.

(b) The Commissioner may promulgate rules or regulations with respect to the requirements for minimum net worth as are necessary to accomplish the purposes of this Act.

OR

STATE FUND—[Each state choosing this option will draft unique language establishing a fund.]

Section notes:

1. This section makes it clear that a company can provide bonding and net worth for the MLO.

application for licensure.

(b) The amount of the required surety bond or letter of credit must be calculated by combining the annual loan production amounts for all business locations of the mortgage broker or mortgage lender and must be in the following amount:

(i) \$25,000 for a combined annual loan production that does not exceed \$50 million per year; or

(ii) \$50,000 for annual loan production above \$50 million per year.

(3) In lieu of a surety bond, a mortgage lender may provide an irrevocable letter of credit issued by a federally insured banking institution in an amount equal to and on the same basis as the surety bond requirements referenced in subsections (2)(a) and (2)(b).

(4) (a) In lieu of a surety bond, a mortgage broker may meet a minimum net worth requirement, and in lieu of a surety bond or irrevocable letter of credit, a mortgage lender may meet a minimum net worth requirement.


(b) Minimum net worth must be maintained in an amount determined by the department that reflects the dollar amount of loans originated.

(c) The department shall adopt rules with respect to

the requirements for minimum net worth as are necessary to accomplish the purposes of this part.

(5) Evidence that a mortgage broker or a mortgage lender is approved by the department of housing and urban development to originate loans insured by the federal housing administration must be considered as satisfying the net worth requirement.

(2)(6) A mortgage broker, mortgage lender, or mortgage loan originator shall give notice to the department by certified mail within 15 days of the mortgage broker's, mortgage lender's, or mortgage loan originator's obtaining knowledge of the initiation of an investigation or the entry of a judgment in a criminal or civil action. The notice must be given if the investigation or the legal action is in any state and involves a mortgage broker, mortgage lender, anyone having an ownership interest in a mortgage broker entity or mortgage lender entity, or a mortgage loan originator. In the case of a legal action, the notice must include a copy of the criminal or civil judgment."



50 No language needed.

51 No language needed.

52

Section notes:
1. See lines 26 and 42 for fee language.

53 Section notes:

	<p>1. This language covered under MSL XX.XXX.050(4) Background Checks.</p> <p>2. This language covered under MSL XX.XXX.050(5) Background Checks.</p>	
54	<p>MSL XX.XXX.150 CONFIDENTIALITY—In order to promote more effective regulation and reduce regulatory burden through supervisory information sharing—</p> <p>(1) PROTECTIONS—Except as otherwise provided in Public Law 110-289, Section 1512, the requirements under any Federal law or [state citation for public disclosure law] regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under Federal or State law (including the rules of any Federal or State court) with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. Such information and material may be shared with all State and Federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by Federal law or [state citation of public disclosure law].</p> <p>(2) AGREEMENTS AND SHARING ARRANGEMENTS—For these purposes, the Commissioner is authorized to enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators or other associations representing governmental agencies as established by rule, regulation or order of the Commissioner.</p> <p>(3) NONAPPLICABILITY OF CERTAIN REQUIREMENTS—Information or material that is</p>	<p>Section 27. Confidentiality. (1) (a) Except as otherwise provided in section 1512 of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, the requirements under federal law, the Montana constitution, or Montana law regarding the privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system and registry and any privilege arising under federal or state law, including the rules of a federal or state court, pertaining to the information or material continue to apply to the information or material after the information or material has been disclosed to the nationwide mortgage licensing system and registry.</p> <p>(b) Information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority and with the board of governors of the federal reserve system without the loss of confidentiality protections or the loss of privilege provided by federal law, the Montana constitution, or Montana law.</p> <p>(2) The department may enter into agreements or</p>

subject to a privilege or confidentiality under subsection (1) of this section shall not be subject to—

(a) Disclosure under any Federal or State law governing the disclosure to the public of information held by an officer or an agency of the Federal Government or the respective State; or

(b) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.

(4) COORDINATION WITH [State citation of public disclosure law]—[State citation of public disclosure law] relating to the disclosure of confidential supervisory information or any information or material described in subsection (1) of this section that is inconsistent with subsection (1) shall be superseded by the requirements of this section.

(5) PUBLIC ACCESS TO INFORMATION—This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or associations representing governmental agencies as established by rule of the department.

(3) Information or material subject to confidentiality or a privilege under subsection (1) is not subject to:

(a) disclosure under a federal or state law governing disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or


(b) subpoena, discovery, or admission into evidence in any private civil action or administrative process unless, with respect to any privilege held by the nationwide mortgage licensing system and registry concerning the information or material, the person to whom the information or material pertains waives, in whole or in part, that privilege.

(4) Montana law relating to the disclosure of confidential supervisory information or information or material described in subsection (1) that is inconsistent with subsection (1) is superseded by the requirements of section 1512 of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act, Public Law 110-289.

(5) Examination reports, information contained in examination reports, and examiners' work papers are confidential, subject to the licensee's and any uninvolved person's reasonable expectation of privacy

and, although filed with the department as provided in this part, are not subject to public inspection.

(6) This section does not apply to information or material relating to the employment history of and publicly adjudicated disciplinary and enforcement actions against mortgage lenders, mortgage brokers, and mortgage loan originators included in the nationwide mortgage licensing system and registry that is available for public access.



55 No language needed.

56 No language needed.

57 **MSL XX.XXX.160 [For states lacking sufficient investigation or examination authority for compliance with S.A.F.E. Sec. 1515.]**
INVESTIGATION AND EXAMINATION AUTHORITY—In addition to any authority allowed under this Act the Commissioner shall have the authority to conduct investigations and examinations as follows:

(1) **AUTHORITY TO ACCESS INFORMATION**—For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this Act, the Commissioner shall have the authority to access, receive and use any books, accounts, records, files, documents, information or evidence including but not limited to:

- (a) Criminal, civil and administrative history information, including nonconviction data as specified in [state criminal code citation]; and
- (b) Personal history and experience information including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and
- (c) Any other documents, information or evidence the Commissioner deems relevant to the inquiry or investigation regardless of the

32-9-141. Investigations by department -- subpoenas -- oaths -- examination of witnesses and evidence.

(1) For the purposes of this part, the department or the department's authorized representatives must be given free access to the offices and places of business and files of all licensees. The department may investigate any matter, upon complaint or otherwise, if it appears that a person has engaged in or offered to engage in any act or practice that is in violation of any provision of this part or any rule adopted or order issued by the department pursuant to this part.

(2) The department may issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction, control, or supervision pertaining to this part. The

location, possession, control or custody of such documents, information or evidence.

(2) INVESTIGATION, EXAMINATION, AND SUBPOENA AUTHORITY—For the purposes of investigating violations or complaints arising under this Act, or for the purposes of examination, the Commissioner may review, investigate, or examine any licensee, individual or person subject to this Act, as often as necessary in order to carry out the purposes of this Act. The Commissioner may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may direct, subpoena, or order such person to produce books, accounts, records, files, and any other documents the Commissioner deems relevant to the inquiry.

(3) AVAILABILITY OF BOOKS AND RECORDS—Each licensee, individual or person subject to this Act shall make available to the Commissioner upon request the books and records relating to the operations of such licensee, individual or person subject to this Act. The Commissioner shall have access to such books and records and interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual or person subject to this Act concerning their business.

(4) REPORTS AND OTHER INFORMATION AS DIRECTED—Each licensee, individual or person subject to this Act shall make or compile reports or prepare other information as directed by the Commissioner in order to carry out the purposes of this section including but not limited to:

- (a) Accounting compilations;
- (b) Information lists and data concerning loan transactions in a format prescribed by the Commissioner; or
- (c) Such other information deemed necessary to carry out the purposes of this section.

(5) CONTROL ACCESS TO RECORDS—In making any examination or investigation authorized by this Act, the Commissioner may control access to any documents and records of the licensee or person

department may administer oaths and affirmations to a person whose testimony is required.

(3) If a person refuses to obey a subpoena or to give testimony or produce evidence as required by the subpoena, a judge of the district court of Lewis and Clark County or the county in which the licensed premises are located may, upon application and proof of the refusal, issue a subpoena or subpoena duces tecum for the witness to appear before the department to give testimony and produce evidence as may be required. The clerk of court shall then issue the subpoena, as directed, under the seal of the court, requiring the person to whom it is directed to appear at the time and place designated in the subpoena.

(4) If a person served with a subpoena refuses to obey the subpoena or to give testimony or produce evidence as required by the subpoena, the department may proceed under the contempt provisions of Title 3, chapter 1, part 5.

(5) Failure to comply with the requirements of a court-ordered subpoena is punishable pursuant to 45-7-309.

under examination or investigation. The Commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the Commissioner. Unless the Commissioner has reasonable grounds to believe the documents or records of the licensee have been, or are at risk of being altered or destroyed for purposes of concealing a violation of this Act, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

(6) **ADDITIONAL AUTHORITY**—In order to carry out the purposes of this section, the Commissioner may:

- (a) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;
- (b) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information or evidence obtained under this section;
- (c) Use, hire, contract or employ public or privately available analytical systems, methods or software to examine or investigate the licensee, individual or person subject to this Act;
- (d) Accept and rely on examination or investigation reports made by other government officials, within or without this state; or
- (e) Accept audit reports made by an independent certified public accountant for the licensee, individual or person subject to this Act in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination,

	<p>report of investigation or other writing of the Commissioner.</p> <p>(7) EFFECT OF AUTHORITY—The authority of this section shall remain in effect, whether such a licensee, individual or person subject to this Act acts or claims to act under any licensing or registration law of this State, or claims to act without such authority.</p> <p>(8) WITHHOLD RECORDS—No licensee, individual or person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.</p> <p>Section notes:</p> <p>1. Subsection (3). Although the authority to review records and “interview” in this subsection may seem redundant to the subpoena authority above, this subsection makes it clear that the Commissioner’s staff does not need a subpoena in order to look at records or interview the staff of a licensee or any “person subject to this Act.”</p>	
58		
59	No language needed.	
60	<p>MSL XX.XXX.170 [This language is optional for states with insufficient coverage of prohibited practices. Each state will provide its own intro and include the practices as necessary. Practices 6, 8 and 10 directly support requirements in the S.A.F.E. Act. The remaining sections support the stated objectives of the S.A.F.E. Act.]</p> <p>PROHIBITED ACTS AND PRACTICES—It is a violation of this Act for a person or individual subject to this Act to:</p> <p>(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;</p> <p>(2) Engage in any unfair or deceptive practice toward any person;</p> <p>(3) Obtain property by fraud or misrepresentation;</p> <p>(4) Solicit or enter into a contract with a borrower that provides in substance that the person or</p>	<p>"32-9-124. Prohibitions -- required disclosure. (1) A mortgage broker, <u>mortgage lender</u>, or <u>mortgage</u> loan originator may not do any of the following:</p> <p>(a) retain original documents owned by the borrower and submitted in connection with the loan application;</p> <p>(b) directly or indirectly employ any scheme to defraud or mislead a borrower, a <u>mortgage</u> lender, or any other person;</p> <p>(c) make any misrepresentation or deceptive statement in connection with a residential mortgage loan, including but not limited to interest rates, points,</p>

individual subject to this Act may earn a fee or commission through "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;

(6) Conduct any business covered by this Act without holding a valid license as required under this Act, or assist or aide and abet any person in the conduct of business under this Act without a valid license as required under this Act ;

(7) Fail to make disclosures as required by this Act and any other applicable state or federal law including regulations thereunder;

(8) Fail to comply with this Act or rules or regulations promulgated under this Act, or fail to comply with any other state or federal law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this Act;

(9) Make, in any manner, any false or deceptive statement or representation [optional add on: including, with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising];

(10) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the Nationwide Mortgage Licensing System and Registry or in connection with any investigation conducted by the Commissioner or another governmental agency;

(11) Make any payment, threat or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment threat or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

costs at closing, or other financing terms or conditions;

(d) fail to pay a bona fide third party later than 30 days after recording of the loan closing documents or 90 days after completion of the bona fide third-party service, whichever is earlier, unless otherwise agreed by the parties;

(e) accept any fees or compensation at closing that were not disclosed as required by state or federal law;

(f) accept any fees or compensation in excess of those allowed by state or federal law; or

(g) sign a borrower's application or related documents on behalf of or in lieu of another mortgage broker, mortgage lender, or mortgage loan originator;

(h) (i) assist or aid and abet any person in the conduct of business under this part without a valid license as required under this part; or

(ii) if a mortgage broker or mortgage loan originator, conduct any business covered by the provisions of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, without holding a valid license as required under this part;

(i) fail to comply with this part or rules promulgated under this part or fail to comply with any other state or federal laws, including the rules and regulations adopted pursuant to those laws, applicable to any business authorized by or conducted under this part;

(3) while (name of licensee) seeks to assist you in meeting your financial needs, (name of licensee) does not distribute products of all lenders or investors in the market and cannot guarantee the lowest price or best terms available.

SECTION 2. OUR COMPENSATION.

(1) The retail price (name of licensee) offers you, including the interest rate, total points, and fees, will include (name of licensee's) compensation.

(2) In some cases, (name of licensee) may be paid all of (name of licensee's) compensation by either you or the lender.

(3) Alternatively, (name of licensee) may be paid a portion of (name of licensee's) compensation by both you and the lender. For example, in some cases, if you would rather pay a lower interest rate, you may pay more money in upfront points and fees. Also, in some cases, if you would rather pay less money up front, you may be able to pay some or all of our compensation indirectly through a higher interest rate, in which case (name of licensee) will be paid directly by the lender.

(4) (Name of licensee) may also be paid by the lender based on the value of the mortgage loan or related servicing rights in the market place or based on other services, goods, or facilities performed or provided by (name of licensee) to the lender.

By signing below, you acknowledge that you have received a copy of this disclosure."

		<p>(3) The disclosure must include the address of the department's division of banking and financial institutions, the division's phone number and website, and a statement informing borrowers that the division can provide information about whether a mortgage broker or <u>mortgage</u> loan originator is licensed as well as other legally available information.</p> <p>(4) <u>The disclosure must include the unique identifier issued by the nationwide mortgage licensing system and registry for the mortgage broker or mortgage loan originator."</u></p>
61	<p>MSL XX.XXX.210 UNIQUE IDENTIFIER SHOWN—The unique identifier of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations or advertisements, including business cards or websites, and any other documents as established by rule, regulation or order of the Commissioner.</p>	<p>Unique identifier for mortgage brokers, mortgage loan originators, and registered mortgage loan originators. (1) Each licensed mortgage broker, mortgage loan originator, and registered mortgage loan originator shall post the mortgage broker's, mortgage loan originator's, or registered mortgage loan originator's unique identifier in a conspicuous place within the office where the licensee principally transacts business.</p> <p>(2) The department shall post on its website the names of all licensees, together with their license numbers. In conjunction with that posting, the department shall also provide the unique identifier of all licensed mortgage brokers and mortgage loan originators so that consumers, borrowers, and the public may access that information for use in conjunction with the nationwide mortgage licensing system and registry.</p>

		(3) The department shall also post on its website the names and unique identifiers of all registered mortgage loan originators conducting business in the state.
62	MSL XX.XXX.220 SEVERABILITY —If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.	Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.
63	MSL XX.XXX.230 EFFECTIVE DATE —The effective date of this Act shall be July 31, 2009.	Section 31. Effective date. [This act] is effective July 1, 2009.